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IN THE

Supreme Court of the United States

OF AMERICA.

OCTOBER TERM, 1930—No. 2.

FRANCIS BEIDLER, II, and GEORGE ENGELKING, as Executors of the Last Will and Testament of FRANCIS BEIDLER, *Plaintiffs-in-Error,*

vs.

SOUTH CAROLINA TAX COMMISSION, *Defendant-in-Error.*

MOTION ON BEHALF OF THE TAX COMMISSION OF THE STATE OF NEW YORK FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF.

SETH T. COLE, ESQ.,
Counsel for Amici Curiæ.

BATAVIA TIMES, LAW PRINTERS,
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Defendant-in-Error.

Motion on Behalf of the Tax Commission of the State of New York for Leave to File Brief as *Amici Curiae.*

COME NOW, Thomas M. Lynch, John J. Merrill and Mark Graves, constituting the Tax Commission of the State of New York, and move this Honorable Court for leave to file the annexed brief as *amici curiæ.*

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Defendant-in-Error.

BRIEF ON BEHALF OF THE TAX COMMISSION OF THE STATE OF NEW YORK AS *AMICI CURIAE.*

Statement.

This cause presents the question whether the state of domicile of a corporation has power to impose an inheritance or transfer tax upon debts owing by said corporation to a decedent who at the time of his death was domiciled in another state, such debts being moneys due said de-

cedent on account of loans and on account of dividends declared by the corporation prior to the decedent's death but then unpaid.

The state of domicile of the corporation was South Carolina, and the state of domicile of the decedent was Illinois.

It is asserted that the State of South Carolina has the power to tax these debts under principles enunciated by this Court in the case of *Blackstone v. Miller*, 188 U. S. 189, and also because said debts have a business situs in South Carolina.

This brief is filed on behalf of the Tax Commission of the State of New York because it is interested in the establishment and maintenance of a sound and logical system of death taxation not alone in the State of New York but throughout the United States. It is the thought of said Commission that the present is a crucial period in the development of death taxation in this country and that a false step may make it impossible for the states to retain the death tax as a source of substantial revenue.

IT IS CONTRARY TO THE DUE PROCESS OF LAW PROVISION OF THE CONSTITUTION OF THE UNITED STATES FOR A STATE OTHER THAN THAT OF THE DOMICILE OF A DECEDENT TO IMPOSE A DEATH TAX UPON ANY OF THE INTANGIBLE PERSONAL PROPERTY OWNED BY SUCH DECEDENT.

In *Farmers' Loan and Trust Co. v. Minnesota*, 280 U. S. 204, this Court, in a broad and sweeping decision, gave

recognition to the abuses which had developed in the death tax field, sanctioned to some extent by its former decisions, and, abandoning the old landmarks, set a new course in keeping with the spirit and thought of the times. In so doing, it placed the case of *Blackstone v. Miller,* 188 U. S. 189, and many others on the *Index Expurgatorius* (see Mr. Justice Holmes' opinion in *Baldwin v. Missouri,* 281 U. S. 586).

It is believed that this Court has definitely taken the position that double or multiple taxation of transfers at death is prohibited by the Fourteenth Amendment. Indeed, in the Minnesota case, in the opinion of Mr. Justice McReynolds, it was said:

> "*Blackstone v. Miller, supra,* and certain approving opinions, lend support to the doctrine that ordinarily choses in action are subject to taxation both at the debtor's domicile and at the domicile of the creditor; that two states may tax on different and more or less inconsistent principles the same testamentary transfer of such property without conflict with the 14th Amendment. The inevitable tendency of that view is to disturb good relations among the states and produce the kind of discontent expected to subside after establishment of the Union. The Federalist, No. VII. The practical effect of it has been bad; perhaps two-thirds of the states have endeavored to avoid the evil by resort to reciprocal exemption laws. It has been stoutly assailed on principle. *Having reconsidered the supporting arguments in the light of our more recent opinions, we are compelled to declare it untenable.*" (Italics supplied.)

It is, of course, conceivable that this Court might limit the Minnesota case, and the subsequent case of *Baldwin v. Missouri,* 281 U. S. 586, *supra,* to the specific facts with which they were directly concerned, and hold that under different sets of facts, or in respect to intangibles of a

different character, double or multiple death taxation is not prohibited, but a careful study of these cases affords no basis for such a conclusion. To illustrate, it is possible, but very unlikely, that the Court might say, with respects to intangibles which have acquired a business situs away from the domicile of the owner, that they may be taxed both by the state of domicile and by the state of business situs, or, where the owner of shares of corporate stock and the corporation issuing such shares are domiciled in different states, that each of said states may tax such shares.

Suffice it to say that as potent reasons were available for permitting double taxation of the intangibles involved in the Minnesota and Missouri cases as could be advanced for double taxation because of business situs or corporate domicile, and the considerations which favor the elimination of multiple death taxation are equally strong regardless of what the facts as to situs or the nature of the intangibles may be.

Proceeding, therefore, upon the assumption that multiple death taxation of intangibles is proscribed, we are still to consider what state has the power to impose the single tax. Is it the state of domicile of the decedent in all cases, or is it the state of domicile of the corporation in the case of corporate shares, the state of business situs in case the intangibles had such situs in a state in which the decedent was not domiciled or possibly some state other than that of the decedent's domicile for some other reason? These questions are still open.

Aside from legal complications, it would seem that the best interests of the several states which comprise the Union will be served if it be determined that intangible